

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In re	:
	:
SEARS HOLDINGS CORPORATION, <i>et al.</i> ,	:
	:
Debtors. <sup>1</sup>	:
-----X	

Chapter 11  
Case No. 18-23538 (RDD)  
(Jointly Administered)

**OBJECTION OF ORKIN, LLC TO SECOND SUPPLEMENTAL NOTICE OF CURE  
COSTS AND POTENTIAL ASSUMPTION AND ASSIGNMENT OF EXECUTORY  
CONTRACTS AND UNEXPIRED LEASES IN CONNECTION  
WITH GLOBAL SALE TRANSACTION [Docket 2314]**

Orkin, LLC (“Orkin”) submits this Objection to the Debtors’ Second Supplemental Notice of Cure Costs and Potential Assumption and Assignment of Executory Contracts and Unexpired Leases in Connection with Global Sale Transaction [Docket 2314] (the “Second Supplemental Assumption Notice”) filed on January 31, 2019, and respectfully states as follows:

1. Orkin and Sears, Roebuck and Co., a New York corporation (“Sears”), Sears Operations LLC, a Delaware limited liability company (“Sears Ops”), Kmart Corporation, a Michigan corporation (“Kmart”), Kmart Operations LLC, a Delaware limited liability company (“Kmart Ops”), Sears Roebuck de Puerto Rico, Inc., a Delaware corporation (“SRPR”), Innovel

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are as follows: Sears Holdings Corporation (0798); Kmart Holding Corporation (3116); Kmart Operations LLC (6546); Sears Operations LLC (4331); Sears, Roebuck and Co. (0680); ServiceLive Inc. (6774); SHC Licensed Business LLC (3718); A&E Factory Service, LLC (6695); A&E Home Delivery, LLC (0205); A&E Lawn & Garden, LLC (5028); A&E Signature Service, LLC (0204); FBA Holdings Inc. (6537); Innovel Solutions, Inc. (7180); Kmart Corporation (9500); MaxServ, Inc. (7626); Private Brands, Ltd. (4022); Sears Development Co. (6028); Sears Holdings Management Corporation (2148); Sears Home & Business Franchises, Inc. (6742); Sears Home Improvement Products, Inc. (8591); Sears Insurance Services, L.L.C. (7182); Sears Procurement Services, Inc. (2859); Sears Protection Company (1250); Sears Protection Company (PR) Inc. (4861); Sears Roebuck Acceptance Corp. (0535); Sears, Roebuck de Puerto Rico, Inc. (3626); SYW Relay LLC (1870); Wally Labs LLC (None); SHC Promotions LLC (9626); Big Beaver of Florida Development, LLC (None); California Builder Appliances, Inc. (6327); Florida Builder Appliances, Inc. (9133); KBL Holding Inc. (1295); KLC, Inc. (0839); Kmart of Michigan, Inc. (1696); Kmart of Washington LLC (8898); Kmart Stores of Illinois LLC (8897); Kmart Stores of Texas LLC (8915); MyGofer LLC (5531); Sears Brands Business Unit Corporation (4658); Sears Holdings Publishing Company, LLC. (5554); Sears Protection Company (Florida), L.L.C. (4239); SHC Desert Springs, LLC (None); SOE, Inc. (9616); StarWest, LLC (5379); STI Merchandising, Inc. (0188); Troy Coolidge No. 13, LLC (None); BlueLight.com, Inc. (7034); Sears Brands, L.L.C. (4664); Sears Buying Services, Inc. (6533); Kmart.com LLC (9022); Sears Brands Management Corporation (5365); and SRe Holding Corporation (4816). The location of the Debtors’ corporate headquarters is 3333 Beverly Road, Hoffman Estates, Illinois 60179.

Solutions, Inc., a Delaware corporation (“Innovel”), and Sears Home Improvement Products, Inc., a Pennsylvania corporation (“SHIP”) (individually or collectively, Sears, Sears Ops, Kmart, Kmart Ops, SRPR, Innovel, and SHIP are referred herein to as “Company”) are parties to that certain Master Services Agreement effective January 1, 2018 (as amended, the “Agreement”), under which Orkin provides pest control services to certain facilities.

2. On January 18, 2018, the Debtors served their Notice of Cure Costs and Potential Assumption and Assignment of Executory Contracts and Unexpired Leases in Connection with Global Sale Transaction [Docket 1731] (the “Initial Assumption Notice”). The Initial Assumption Notice identifies the Agreement as Contract No. CW2334069, which includes Numbers 5385 through 5403 on Exhibit A of the Initial Assumption Notice (the “Orkin Line Items”). The Initial Assumption Notice further identifies a single cure of \$396,273, on Orkin Line Item 5384, for the Agreement. Given that all of the Orkin Line Items refer to the same contract number – CW2334069 - it appears the Debtors are asserting in the Initial Assumption Notice a total cure of \$396,273 for the assumption of the Agreement.

3. Paragraph 17 of the Assumption Notice required objections to the Assumption Notice to be filed by January 25, 2019, which was extended by Debtors’ counsel for Orkin until January 28, 2019. On January 28, 2019, Orkin filed its Limited Objection [Docket 2091] out of an abundance of caution, to be clear that the stated cure of \$396,273 would be paid for any assumption of the Agreement.

4. The Debtors filed their Second Supplemental Assumption Notice on January 31, 2019. Paragraph 7 of the Second Supplemental Assumption Notice contains the statement that: “Each of the Contracts that may be assumed and assigned in connection with the Global Asset Sale Transaction that were not included in the Initial Notice or the Supplemental Notice (the

“Additional Contracts”) and the Debtors’ calculation of the Cure Costs with respect thereto are set forth on Exhibit A hereto.” Orkin is identified at lines 261 and 262 of Exhibit A, with a Master Agreement and First Amendment to Master Agreement. Exhibit A lists no contract number and no cure amount.

5. Orkin, however, is aware of no other agreement with the Debtors than the Agreement. Indeed, Contract No. CW2334069 is a number designated by Sears that appears on the .pdf version of the Agreement provided by the Debtors to Orkin for signature through Docusign. Therefore, it appears that the Debtors erroneously included lines 261 and 262 on Exhibit A to the Second Supplemental Assumption Notice.

6. While Orkin remains willing to accept the sum of \$396,273 for assumption of its Agreement with the Debtors, the actual prepetition sum due and owing to Orkin for prepetition cure is \$464,952.06. In the event this matter is litigated, Orkin reserves the right to assert this full cure amount, rather than the \$396,273, for the assumption of its agreement with the Debtors.

WHEREFORE, Orkin respectfully requests that the Court enter an Order requiring payment of \$396,273 (or \$464,952.06, in the event this matter is litigated) for the assumption of any agreement between it and the Debtors, together with such other and further relief as is just and proper.

Dated: February 11, 2019

ARNALL GOLDEN GREGORY LLP

By: /s/ Darryl S. Laddin  
Darryl S. Laddin  
171 17<sup>th</sup> Street NW, Suite 2100  
Atlanta, GA 30363-1031  
Telephone: (404) 873-8500  
Fax: (404) 873-8121  
[darryl.laddin@agg.com](mailto:darryl.laddin@agg.com)

*Attorneys for Orkin, LLC*

**CERTIFICATE OF SERVICE**

I, Darryl S. Laddin, hereby certify that on February 11, 2019, the foregoing *Objection of Orkin, LLC to Second Supplemental Notice of Cure Costs and Potential Assumption and Assignment of Executory Contracts and Unexpired Leases in Connection with Global Sale Transaction* was served on the following:

1. The parties requesting ECF notifications via the Court's CM/ECF case notification system;

2. All other parties requesting notice pursuant to Rule 2002 and in accordance with this Court's Amended Order Implementing Certain Notice and Case Management Procedures entered on November 1, 2018 [Docket No. 405];

3. The parties set forth below by regular, first class mail:

- a. Chambers of the Honorable Judge Robert D. Drain  
United States Bankruptcy Court for the Southern District of New York  
300 Quarropas Street, Room 248  
White Plains, New York 10601
- b. Sears Holdings Corporation  
3333 Beverly Road  
Hoffman Estates, Illinois 60179  
Attn: Stephen Sitley Esq.  
Luke J. Valentino, Esq.
- c. Office of the United States Trustee for Region 2  
201 Varick Street, Suite 1006  
New York, New York 10014  
Attn: Paul Schwartzberg, Esq.

4. The parties set forth below by electronic mail:

- a. Debtors  
Rob Riecker - rob.riecker@searshc.com  
Luke Valentino - luke.valentino@searshc.com  
Mohsin Meghji - [mmeghji@miiipartners.com](mailto:mmeghji@miiipartners.com)
- b. Debtors' Counsel  
Weil, Gotshal & Manges LLP  
767 Fifth Avenue New York, New York 10153  
Attn: Ray C. Schrock, P.C.

Jacqueline Marcus, Esq.  
Garret A. Fail, Esq.  
Sunny Singh, Esq.  
ray.schrock@weil.com; garrett.fail@weil.com;  
jacqueline.marcus@weil.com; [sunny.singh@weil.com](mailto:sunny.singh@weil.com)

- c. Attorneys for Bank of America, N.A., administrative agent under the First Lien Credit Facility and the DIP ABL Agent  
Skadden, Arps, Slate, Meagher & Flom LLP  
4 Times Square New York, NY 10036  
Attn: Paul D. Leake, Esq.  
Shana A. Elberg, Esq.  
George R. Howard, Esq.  
paul.leake@skadden.com; shana.elberg@skadden.com;  
[george.howard@skadden.com](mailto:george.howard@skadden.com)
- d. Attorneys for Citibank, N.A., as administrative agent under the Stand-Alone L/C Facility  
Davis Polk & Wardell LLP  
450 Lexington Avenue New York, NY 10017  
Attn: Marshall S. Huebner, Esq.  
Eli J. Vonnegut, Esq.  
marshall.huebner@davispolk.com; [eli.vonnegut@davispolk.com](mailto:eli.vonnegut@davispolk.com)
- e. Attorneys for JPP, LLC, as agent under the Second Lien Credit Facility, IP/Ground Lease Term Loan Facility, and the Consolidated Secured Loan Facility  
Cleary, Gottlieb  
One Liberty Plaza New York, NY 10006  
Attn: Sean A. O'Neal, Esq.  
[soneal@cgsh.com](mailto:soneal@cgsh.com)
- f. Attorneys for Computershare Trust Company, N.A., as trustee for the Second Lien PIK Notes, the Holdings Unsecured PIK Notes, and the Holdings Unsecured Notes  
Kelley Drye & Warren LLP  
101 Park Avenue New York, NY 10178  
Attn: Eric R. Wilson, Esq.  
Benjamin D. Feder, Esq.  
T. Charlie Liu, Esq.  
ewilson@kelleydrye.com; bfeder@kelleydrye.com; [cliu@kelleydrye.com](mailto:cliu@kelleydrye.com)

- g. Attorneys for Wilmington Trust, National Association, as indenture trustee for the Second Lien Notes Seyfarth Shaw, LLP  
620 Eighth Avenue New York, NY 10018  
Attn: Edward M. Fox, Esq.  
[emfox@seyfarth.com](mailto:emfox@seyfarth.com)
- h. Attorneys for The Bank of New York Mellon Trust Company, as successor trustee for the SRAC Unsecured PIK Notes, SRAC Unsecured Notes, and the SRAC Medium Term Notes  
Carter Ledyard & Milburn LLP  
2 Wall Street New York, NY 10015  
Attn: James Gadsden, Esq.  
[gadsden@clm.com](mailto:gadsden@clm.com)
- i. Attorneys for the Pension Benefit Guaranty Corporation  
Locke Lord LLP  
111 South Wacker Drive Chicago, IL 60606  
Attn: Brian A. Raynor, Esq.  
[braynor@lockelord.com](mailto:braynor@lockelord.com)
- j. Attorneys for the Official Committee of Unsecured Creditors  
Akin Gump Strauss Hauer & Feld LLP  
One Bryant Park New York, New York 10036  
Attn: Philip C. Dublin, Esq.  
Ira Dizengoff, Esq.  
Sara Lynne Brauner, Esq.  
[pdublin@akingump.com](mailto:pdublin@akingump.com); [idizengoff@akingump.com](mailto:idizengoff@akingump.com);  
[sbrauner@akingump.com](mailto:sbrauner@akingump.com)
- k. Attorneys to Wells Fargo Bank, National Association  
Choate, Hall & Stewart LLP  
Two International Place Boston, MA 02110  
[ksimard@choate.com](mailto:ksimard@choate.com); [jmarshall@choate.com](mailto:jmarshall@choate.com)
- l. Debtors' Investment Banker  
Lazard Frères & Co., LLC  
30 Rockefeller Plaza, New York, New York 10112  
Attn: Brandon Aebersold  
Levi Quaintance  
[project.blue.rx@lazard.com](mailto:project.blue.rx@lazard.com)

m. Buyer  
Transform Holdco LLC  
c/o ESL Partners, Inc.  
1170 Kane Concourse, Suite 200 Bay Harbor Islands, FL 33154  
Attn.: Kunal S. Kamlani  
Harold Talisman  
kunal@eslinvest.com; [harold@eslinvest.com](mailto:harold@eslinvest.com)

Dated: February 11, 2019

/s/ Darryl S. Laddin  
Darryl S. Laddin  
ARNALL GOLDEN GREGORY LLP  
171 17th Street NW, Suite 2100  
Atlanta, GA 30363-1031  
Telephone: (404) 873-8500  
Fax: (404) 873-8121  
[darryl.laddin@agg.com](mailto:darryl.laddin@agg.com)

*Attorneys for Orkin, LLC*